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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/964,000

Filing Date: September 26, 2001

Appellant(s): GUESS, WILLIAM YOUNGER

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William Y. Guess  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed February 5, 2008 appealing from the Office action mailed January 14, 2008.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

10/109,478 is currently before the BPAI and has the same inventor

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is deficient. 37 CFR 41.37(c)(1)(v) requires the summary of claimed subject matter to include: (1) a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number, and to the drawing, if any, by reference characters and (2) for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function

and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters. The brief is deficient because appellant has not identified the specific claim limitations of independent claims 22, 30, 31, 40, and 44 and where they are supported in the application. In addition, appellant has not set forth the structure, material, or acts described in the specification as corresponding to each claimed function for every means plus function limitation under 35 U.S.C. 112, sixth paragraph.

However, it is also noted that applicant is not represented by a registered practitioner, as per CFR 41.37(c)(1) and therefore needs only to substantially comply with items I-IV and VII-X of the appeal brief as pointed out in the petition decision of 12/6/07. Therefore, the summary has been accepted for the purpose of advancing prosecution in this appeal.

#### **(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant has not provided a statement of the grounds of rejection to be reviewed on appeal. However, it is also noted that applicant is not represented by a registered practitioner, as per CFR 41.37(c)(1) and therefore needs only to substantially comply with items I-IV and VII-X of the appeal brief as pointed out in the petition decision of 12/6/07. Therefore, the examiner shall provide the grounds of rejection which were present in the non-final rejection of 1/14/08:

- (1) The rejection of claims 22-46 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.
- (2) The rejection of claims 22-29, 31-33, 36-39, 41-43, and 45-46 under 35 U.S.C. 112, second paragraph, as being indefinite.
- (3) The rejection of claims 22-23, 30-31, 35-36, 40-41, and 44-45 under 35 U.S.C. 102(b) as being anticipated by Lovell [Pat. No. 3,615,692].
- (4) The rejection of claims 22, 24, 30-31, 35-36, 40-41, and 44-45 under 35 U.S.C. 102(e) as being anticipated by Holbrook [Pat. No. 6,599,545].
- (5) The rejection of claim 31 under 35 U.S.C. 102(e) as being anticipated by Haig [Pat. No. 6,582,741].
- (6) The rejection of claims 22, 24, 30, 40-41, and 44-45 under 35 U.S.C. 103(a) over Haig in view of Huling [Pat. No. 6,117,467].
- (7) The rejection of claims 26-29 and 42-43 under 35 U.S.C. 103(a) over Haig, in view of Huling, and further in view of Applicant's Admitted Prior Art [pages 1-3 of the specification].
- (8) The rejection of claims 23 and 25 under 35 U.S.C. 103(a) over Haig, in view of Huling, and further in view of Giuliano Bugialli's Techniques of Italian Cooking.
- (9) The rejection of claims 32-34 under 35 U.S.C. 103(a) over Haig in view of Bemis [Pat. No. 1,807,189].
- (10) The rejection of claims 37-39 and 46 under 35 U.S.C. 103(a) over Holbrook in view of Bemis.

### **(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

### **(8) Evidence Relied Upon**

3,615,692	LOVELL	10-1971
6,599,545	HOLBROOK	7-2003
6,582,741	HAIG	6-2003
6,117,467	HULING	9-2000
1,807,189	BEMIS	5-1931

Applicant's Admitted Prior Art (pages 1-3 of the specification)

Giuliano Bugialli's Classic Techniques of Italian Cooking, pgs 285-287, 1982, Simon & Schuster/Fireside, NY as found in the IDS of 9/26/01.

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 22-46 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter

which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The application does not appear to disclose "a dominant proportion of water and protein" in claim 22, "a weight of at least 7 (or 10) percent" in claims 30 and 35, "means for highlighting" in claims 24, 31-32, 36-37, 41, and 45-46, and "non-pork muscle tissue" in claims 40 and 44.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 22-29, 31-33, 36-39, 41-43, and 45-46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 22 recites "a dominant proportion of water and protein". It is not clear what level of protein and water would be considered "dominant".

6. Claims 24, 31-32, 36-37, 41, and 45-46 recite "means for highlighting". It is not clear what component this refers to. It is not clear whether any component is required since the transition between two components could provide this function.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 1700

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 22-23, 30-31, 35-36, 40-41, and 44-45 are rejected under 35

U.S.C. 102(b) as being anticipated by Lovell [Pat. No. 3,615,692].

Lovell teaches a food comprising a first elongate muscle mass (Figure 2, #5), a second elongate muscle mass which inherently provided highlight means and a boundary with the first muscle mass (Figure 4, #35 & 40; column 2, line 31), and the second muscle mass being at least 10% of the weight as shown in Figure 4.

9. Claims 22, 24, 30-31, 35-36, 40-41, and 44-45 are rejected under 35

U.S.C. 102(e) as being anticipated by Holbrook [Pat. No. 6,599,545].

Holbrook teaches a food comprising a first elongate muscle mass (Figure 1, #14; column 3, line 14), a boundary means (Figure 6, #50), a second elongate muscle mass which inherently provided means to determine the boundary (Figure 9, #18; column 3, line 14), and the second muscle mass being at least 10% of the weight (Figure 10).

10. Claims 31 is rejected under 35 U.S.C. 102(e) as being anticipated by Haig [Pat. No. 6,582,741].

Haig teaches a food comprising a first elongate food mass in the form of a pork loin (Figure 1, #25; column 2, line 20) and a second elongate mass which inherently provided highlight means to determine the boundary (Figure 1, #23), and the second mass being at least 10% of the weight (Figure 1).

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 22, 24, 30, 40-41, and 44-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haig as applied above, in view of Huling [Pat. No. 6,117,467].  
Haig teaches a food comprising a first elongate food mass in the form of a pork loin (Figure 1, #25; column 2, line 20), a second elongate food mass which inherently provided highlight means to determine a boundary (Figure 1, #23), and the second food mass being at least 10% of the weight (Figure 1). Haig does not teach the second food being meat. Huling teaches a food product comprising a first muscle mass (Figure 9, #100) and a second muscle mass within the first (Figure 9, #110). It would have been obvious to one of ordinary skill in the art to incorporate the meat filling of Huling into the invention of Haig since both are directed to meat products, since Haig already included a food stuffing (Figure 1, #23), since Huling teaches that meats were commonly stuffed within other meats (Figure 9), and since many consumers would likely find this combination of flavors to be particularly appealing.

13. Claims 26-29 and 42-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haig, in view of Huling, as applied above, and further in view of Applicant's Admitted Prior Art [pages 1-3 of the specification].

Haig and Huling teach the above mentioned components. Haig and Huling do not recite top loin, tenderloin, rib sections, longissimus dorsi, or psoas major. Applicant's Admitted Prior Art (AAPA) teaches that commonly used cuts of meat included top loin, tenderloin, rib sections, longissimus dorsi, or psoas major (pages 1-3 of the specification). It would have been obvious to one of ordinary skill in the art to use the above listed meats in the invention of Haig, in view of Huling, since all are directed to food products, since Haig already include the use of pork loin (column 2, line 20), since Huling already included the use of meat for both the first and second foods (Figure 9), and since many consumers would likely find these combinations of flavors to be particularly appealing.

14. Claims 23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haig, in view of Huling, as applied above, and further in view of Giuliano Bugialli's Techniques of Italian Cooking.

Haig and Huling teach the above mentioned components. Haig and Huling do not recite slicing into steaks. Giuliano Bugialli's Techniques of Italian Cooking teaches slicing a roast into steaks (page 287). It would have been obvious to one of ordinary skill in the art to incorporate the steak slicing of Bugialli into the invention of Haig, in view of Huling, since all are directed to meat products, since Haig already included a pork loin roast (column 2, line 20), since roasts were commonly sliced into steaks as shown by Bugialli (page 287), and since many consumers preferred to eat smaller portions.

15. Claims 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haig, as applied above, in view of Bemis [Pat. No. 1,807,189].

Haig teaches the above mentioned components. Haig does not recite a green leaf around the filling. Bemis teaches a food product comprising a filling wrapped in lettuce (Figure 1, #2-4). It would have been obvious to one of ordinary skill in the art to incorporate the lettuce of Bemis into the invention of Haig since both are directed to stuffed food products, since Haig already included an outer food stuffed with a filling (Figure 1) including vegetables (column 2, line 19), and since the lettuce wrap of Bemis would have provided an efficient and convenient means for holding the particulate stuffing of Haig together prior to and during insertion (Figure 1).

16. Claims 37-39 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holbrook, as applied above, in view of Bemis.

Holbrook teaches the above mentioned components. Holbrook does not recite a green leaf around the filling. Bemis teaches a food product comprising a filling wrapped in lettuce (Figure 1, #2-4). It would have been obvious to one of ordinary skill in the art to incorporate the lettuce of Bemis into the invention of Holbrook since both are directed to stuffed food products, since Holbrook already included an filling enclosed within a sheet (Figure 6), since the lettuce wrap of Bemis would have provided a convenient means for holding the stuffing in place (Figure 1), and since the edible lettuce wrap of Bemis would have eliminated the extra step of removing the inedible sheet of Holbrook prior to consumption (abstract).

#### **(10) Response to Argument**

Regarding the 112(1) rejection of claim 22, appellant has not shown where the rejected claim language is supported by the application. Appellant contends that a “dominant proportion” was 20% protein and 70% water by citing a reference for support (*The Meat We Eat*). However, appellant appears unable to find support for this limitation within the body of the application itself. Furthermore, a “dominant proportion” could alternatively be defined as meaning simply greater than half. Neither of these definitions were found in the application.

Appellant appears to argue that since “tenderloin” is supported, then “dominant proportion” is also supported. However, the term “tenderloin” is found throughout the application, while the term “dominant proportion” is not. Many meat products, such as meat loaf, contain considerably less protein and water the level described in “*The Meat We Eat*”.

In response to appellant's argument that the references fail to show certain features of appellant's invention, it is noted that the features upon which appellant relies (i.e., a whole intact muscle) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding the 112(1) rejection of claims 30 and 35, appellant argues that “at least 7%” and “at least 10%” were supported by the application. However, appellant has not pointed out any specific instance of these limitations. Although some cuts of meat would meet this limitation (ie greater than 7%), there is no evidence of this range within

the application. It is also not clear why 7% would have provide any advantage over 5% or 25%.

Regarding the 112(1) rejection of claims 24, 31-32, 36-37, 41, and 45-46, appellant argues that “means for highlighting” was supported by the application by broadly referring to the “description, drawings and color photographs”. However, appellant does not point to any specific paragraph, figure, or number. Appellant has not met the burden of showing every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, which must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

Regarding the 112(1) rejection of claims 40 and 44, appellant argues that “non-pork muscle tissue” was supported by the application. However, the only instance “beef” or “lamb” occurs in the discussion of the prior art (paragraphs 006-008). Furthermore, the photographs were not submitted until 5/28/04, almost four years after appellant's initial filing of a provisional application.

Regarding the 112(2) rejection of claim 22 for the term "dominant proportion", appellant argues that this term was defined as “substantially 70 percent eater and 20 percent protein”. However, this definition does not appear in the application. In fact, the broadest reasonable interpretation of this term would be simply: greater than half. However, this definition is also missing from the application. It is not clear what level or amount of water and protein would be considered a “dominant proportion”.

Regarding the 112(2) rejection of the term “means for highlighting”, appellant contends that this would equate to a “green leafy material”. However, the application does not provide this definition. In fact, this term’s broadest reasonable interpretation would be: a boundary between two different materials. This point appears to be conceded by appellant page 10 of the Brief where it is stated that “the diner’s close inspection could ascertain the transition, and even the boundary, between these two foodstuffs absent the nori ring”.

Regarding the 102(b) rejections under Lovell, appellant argues that Lovell does not teach an “animal tissue elongate” within the chicken leg. However, Lovell explicitly teaches the filling was meat (column 2, line 31). Appellant appears to be arguing that “muscle tissue elongate” equates to a whole intact muscle. However, appellant has not provided a specific definition for this term within the body of the application. Therefore, it has been given its broadest reasonable interpretation: an elongate muscle mass. This definition would also encompass the meat stuffing of Lovell (column 2, line 31).

Appellant also argues that Lovell does not teach a “means for highlighting”. However, Lovell clearly illustrates a boundary between the chicken leg and its meat stuffing in Figure 4, #25, 35, 40. Appellant concedes that this type of boundary would be “discernable” on page 11 of the Brief. Clearly, a transition between two different meat products would naturally provide a "means for highlighting" this boundary.

In response to appellant's argument that the references fail to show certain features of appellant's invention, it is noted that the features upon which applicant relies (i.e., intact whole muscle portions for the filling) are not recited in the rejected claim(s).

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding the 102(e) rejections under Holbrook, appellant argues that Holbrook does not teach a "tubular preform comprised of meat". However, Holbrook clearly teaches a first foodstuff (Figures 9-10, #14) enclosing a second tubular foodstuff (Figure 9-10, #18) wherein both foodstuffs can be meat (column 3, lines 9-15).

Appellant also argues that coring a meat elongate was not known. However, Haig clearly teaches a device and method for coring a meat elongate (Figures 1-3).

Appellant argues that element #50 of Holbrook cannot be considered "means for highlighting" the boundary because it is not edible. However, this concept is absent from the claims. The claims do not specify whether the "means for highlighting" was edible or not. In response to appellant's argument that the references fail to show certain features of appellant's invention, it is noted that the features upon which appellant relies (i.e., an edible material for the "means for highlighting") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding the 102(e) rejection under Haig, it is noted that only claim 31 is rejected. Appellant argues that Haig does not teach inserting an animal tissue elongate into a pork loin. However, claim 31 only requires inserting an "edible filling" into an

"animal tissue elongate". Certainly, the filling of Haig was edible (Figure 1) and the pork loin of Haig was also an "animal tissue elongate" (column 2, line 20; Figure 1).

Appellant also argues that Haig does not teach a "means for highlighting". However, Haig clearly illustrates a boundary between the pork loin and its stuffing in Figure 1. Appellant concedes that this type of boundary would be "discernable" on page 11 of the Brief. Clearly, a transition between two different meat products would provide a "means for highlighting" this boundary.

Appellant also appears to argue that "citation AD" from the IDS of 9/26/01 by the National Pork Board would also not meet the claim limitations. However, claim 31 has not been rejected by this reference.

Regarding the 103(a) rejection under Haig in view of Huling, it is noted that claims 40-41 and 44-45 were also rejected under this combination of references. Appellant argues that neither reference by itself meets all of the claim limitations. However, in response to appellant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208

USPQ 871 (CCPA 1981). In this case, Haig is directed to a meat product filled with an edible stuffing, while Huling teaches that meats were commonly stuffed with other meat products. It would have been obvious to one of ordinary skill in the art to incorporate the meat filling of Huling into the invention of Haig since both are directed to meat products, since Haig already included a food stuffing (Figure 1, #23), since Huling teaches that meats were commonly stuffed within other meats (Figure 9), and since many consumers would likely find this combination of flavors to be particularly appealing.

In response to appellant's argument that the references fail to show certain features of appellant's invention, it is noted that the features upon which applicant relies (i.e., intact whole muscle portions for the filling) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Haig is directed to a meat product filled with an edible stuffing, while Huling teaches that meats were commonly stuffed with other meat products. It would have been obvious to one of

ordinary skill in the art to incorporate the meat filling of Huling into the invention of Haig since both are directed to meat products, since Haig already included a food stuffing (Figure 1, #23), since Huling teaches that meats were commonly stuffed within other meats (Figure 9), and since many consumers would likely find this combination of flavors to be particularly appealing.

Regarding the 103(a) rejection under Haig in view of Huling and AAPA, it is noted that appellant incorrectly argues Holbrook and Giuliano Bugialli's Techniques of Italian Cooking. Appellant argues that the size of the incision in Haig would not be sufficiently large. However, in response to appellant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a particular size, dimension, or percentage of the meat portion to be inserted) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Appellant argues that Haig taught stuffing a loaf of bread only. However, Haig is clearly directed to stuffing a pork loin as shown in Figure 1 and on column 2, line 20.

Appellant also appears to concede that combining the top loin with the tenderloin was known in the art in the second paragraph of page 15 in the Brief.

In response to appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was

within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Clearly, Haig taught stuffing a meat product, and Huling taught that using another meat product for the stuffing was known.

Regarding the 103(a) rejection of claims 23 and 25, appellant argues that there is no suggestion to combine the references. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Haig is directed to stuffed food products into a pork loin, and Huling also teaches stuffing a meat portion with another meat portion (Figure 9). Giuliano Bugialli teaches that meat roasts were commonly sliced into steaks (page 287). It would have been obvious to one of ordinary skill in the art to incorporate the steak slicing of Bugialli into the invention of Haig, in view of Huling, since all are directed to meat products, since Haig already included a pork loin roast (column 2, line 20), since roasts were commonly sliced into steaks as shown by Bugialli (page 287), and since many consumers preferred to eat smaller portions.

In response to appellant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which appellant relies

(i.e., slicing before cooking, and an absence of trimming) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to appellant's argument that Bugialli teaches slicing after cooking, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, it would have been obvious to one of ordinary skill in the art slice the combined meat product of Haig, Huling, and Bugialli before or after cooking depending upon the individual preference of the person preparing the food. Slicing the meat before cooking would provide a quicker cooking time due to the reduced mass of the product, while slicing the meat after cooking would provide a more uniform appearance to each meat portion and provide consumer with a greater flexibility when choosing their portion size.

Regarding the 103(a) rejection of claims 32-34, appellant argues that the references are nonanalogous art. However, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443,

24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Haig is directed to a stuffed food product (Figure 1) while Bemis is also directed to a stuffed food product wherein Bemis also teaches wrapping the food stuffing in a sheet of lettuce (Figure 1, #2-4). It would have been obvious to one of ordinary skill in the art to incorporate the lettuce of Bemis into the invention of Haig since both are directed to stuffed food products, since Haig already included an outer food stuffed with a filling (Figure 1) including vegetables (column 2, line 19), since the lettuce wrap would act to contain and separate juices from the various food items, and since the lettuce wrap of Bemis would have provided an efficient and convenient means for holding the particulate stuffing of Haig together prior to and during insertion (Figure 1). Further, as noted by appellant in preceding arguments, food products such as sushi commonly contained fish meat wrapped in nori to present a pleasing appearance and taste.

Regarding the 103(a) rejection of claims 37-39 and 46, appellant incorrectly argues against the Haig and Huling references. This rejection actually relied on Holbrook and Bemis. Clearly, appellant's arguments do not apply to these references.

In response to applicant's argument that the examiner has combined an excessive number of references, reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991).

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Drew E Becker/

Primary Examiner, Art Unit 1794

Conferees:

/Gregory L Mills/

Supervisory Patent Examiner, Art Unit 1700

/Milton I. Cano/

Supervisory Patent Examiner, Art Unit 1794